IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.256 OF 2005

Jagdish Jaisinghrao Lingras ... Appellant

Vs.

Vijay Sadanand Dhere & Ors. ... Respondents

Mr. A.B. Borkar for the appellant.

Mr. S.S. Patwardhan for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 24TH MARCH, 2005.

P.C.:-

1. This is an appeal filed under section 72(4) of the Bombay Public Trusts Act, 1950 (for short, "the said Act"). It is well settled that an appeal under section 72(4) of the said Act is in the nature of a second appeal and, therefore, unless substantial question of law is involved, the appeal cannot be entertained by this court.

2. The appellant is a reporting trustee of Maharani Radhabai Vidyarthi Vasatigrah, Radhanagari, District Kolhapur, a Trust, which is registered in the year 1953 (for convenience, "the said Trust"). On 20/2/1986, an application was filed by the appellant under section 50-A of the said Act for settlement of a Scheme in respect of the sad Trust. On 31/8/1989, the Deputy Charity Commissioner approved the Scheme of the said Trust and appointed five persons as first trustees. As per the

said order, the persons interested in election were required to become members of the said Trust by paying subscription amount as per the scheme. The period of the said trustees was for one year within which the election was required to be held. In the absence of the Secretary, the President was empowered to call Annul General Body Meeting and Managing Committee Meetings. In the General Body Meeting held on 17/5/1992, the new Managing Committee was elected for five years. On 14/7/1992, a Change Report was submitted before the Deputy Chairty Commissioner for approval of the newly elected body. The respondents appeared in the said proceedings and contested the same by filing their say. On 12/1/1996, the Deputy Charity Commissioner rejected the Change Report and directed that a copy of his order be submitted to the District Court, Kolhapur for initiation of criminal action against the appellant. The appellant filed Appeal No.8 of 1996 before the learned Joint Chairty Commissioner challenging this order. On 30/12/1999, the Joint Charity Commissioner dismissed the appeal. He directed the Deputy Charity Commissioner to lodge the complaint against the appellant under section 195 of the Criminal Procedure Code. The appellant filed Misc. Civil Application No.29 of 2000 in the District Court at Kolhapur challenging the said judgment and order. The District Court dismissed Misc. Civil Application No.29 of 2000 and, hence, the appellant has preferred this first appeal.

3. I have heard, at considerable length, Mr. Borkar the learned counsel appearing for the appellant. The learned counsel for the appellant contended that the inferences drawn by the courts below are perverse and, therefore, this first appeal needs consideration and deserves to be admitted. The learned counsel urged that the direction to initiate criminal prosecution against the appellant is based on total perverse appreciation of facts and it needs to be interfered with. Relying on the judgments of the Supreme Court in **Chajoo Ram v. Radhey Shyam and another, 1971 SCC (Cri.) 331 and K. N. Mishra v. Jiwaji University, Gwalior, 1980 (Supp.) SCC 415,** the learned counsel submitted that there is inordinate delay in giving direction for prosecution. This long delay militates against expediency of prosecution. He submitted that on that ground also, the impugned order deserves to be quashed and set aside.

4. I am unable to agree with the learned counsel. In my opinion, the concurrent findings of the Deputy Charity Commissioner, Joint Charity Commissioner and the District Court that the appellant appears to have misconducted himself, misappropriated amounts, fabricated notices and has not followed proper procedure in the conduct of Trust meeting, cannot be disturbed in an appeal which is in the nature of a second appeal. So far as the direction under

section 41(a) is concerned, that obviously, cannot be stayed because that is for the benefit of the Trust. So far as the prosecution is concerned, the appellant will always have a chance to prove his innocence. The findings of the authorities below on that count are obviously prima facie findings and ultimately whether the appellant is guilty or not will only be decided by the criminal court after appreciating the evidence which will be led before it. The prosecution, however, cannot be stalled by this court. So far as the aspect of delay is concerned, I find substance in the submission of the learned counsel for the respondents that the delay has been caused by the appellant himself. It is he, who has challenged the order passed by the Deputy Charity Commissioner and Joint Charity Commissioner and obtained stay orders. That has resulted in delay. However, it is open to the appellant to agitate the ground of delay in the criminal court and the criminal court will decide that point independently without being influenced by my observations on delay. In my opinion, there is no question of law involved in the appeal. It does not even merit admission. Hence, rejected. All connected civil applications are disposed of.

5. At this stage, the learned counsel for the appellant states that the operation of the impugned order be stayed. Mr. Patwardhan, the learned counsel for the respondents objects. In the facts and circumstances of

the case, the operation of the impugned order is stayed for a period of eight weeks.

6. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)